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THE PRENDERGAST CASE.

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Medical expert testimony in cases of insanity has been the subject of severe animadversions by judges, both of trial courts and courts of appeal, at various times, and some rather rash condemnatory generalizations have been uttered. The utterances are rash because it is self-evident that there are competent insanity experts as well as incompetent ones, and any general indiscriminating condemnation only indicates that the one who indulges in it does not know or care to know how to distinguish the good from the bad, and is ready to make general deductions from this ignorance. It is unfortunate also that such utterances should be sent out from the Bench, as they tend to discredit the only available method of obtaining the truth and of securing justice in many cases. If insanity is a bar to crime or if it attenuates criminal responsibility in any degree, justice demands that it must be excluded before the accused can receive the full penalty for his offense. At times it may be difficult to ascertain fully and completely the mental state of the individual, and then strict justice requires that every effort be made to determine fairly and positively the full measure of his responsibility. When popular clamor is strongly against the accused, the need of a

calm scientific judgment is all the more evident. Lacking this, there is good reason to believe that public clamor which, in these cases, is by no means always right, and which when unchecked leads to lynch law, has in many instances unconsciously perverted witnesses, judges and juries, and led to outrageous miscarriages of justice.

The case of Patrick Eugene Joseph Prendergast, whose trial for the shooting of Carter H. Harrison, the mayor of Chicago, was finished in December last, is one that is instructive and suggestive in this connection. The prisoner was an imperfectly educated and physically and mentally defective Irish newspaper deliverer, twenty-six years of age, whose record is fairly stated in the summary of the evidence, embodied in the hypothetical question given to the experts for the defense. It may be stated here that the facts thus embodied were not disproven or even seriously contested, the facts of the killing were admitted, and the whole question before the jury rested on the condition of the accused as to sanity and responsibility at the time of the commission of the act. The case was clearly, therefore, one for expert testimony, and this was practically admitted by the prosecution, who engaged six physicians who had presumably had large experience in dealing with and treating the insane, and who might therefore be considered as experts, to examine the prisoner before the trial began. Of these six only one was found willing, after repeated examinations and conferences, to say on the witness stand that the accused was sane and responsible. The testimony of the other five was therefore dispensed with by the prosecution, but three of the six testified, when subpœnæd by the defense, in favor of the insanity and irresponsibility of the prisoner. Besides these, six other physicians testified for the defense, among them two ex-asylum officers and the jail physician. The following is the hypothetical question submitted to the experts for the defense:

"Assume that a young man, born of a family of which the grandfather was insane, presents evidence of hereditary defects in the skull, jaws, teeth and ears. Assume that during childhood the young man exhibited a liking for solitude, did not

take part in the sports of other children and had no friends among them.

"Assume, also, further that he was a dull, backward child at school; that about the period of puberty he became more distrustful and peculiar and in a measure antagonistic to his family. He began to indulge in promiscuous reading and began to advance opinions that were queer and strange in a boy brought up as he had been. He began to display a very exaggerated opinion of his own ability and resented criticism as persecution. Although professing to be a sincere Catholic he began to advance peculiar doctrines about prayer which he attempted to dictate to Christian Brothers by whom he had been educated. These views were so peculiar in a professing Catholic that they impressed the Christian Brother as insane delusions, that he also advanced such extravagant ideas about single tax matters, being an imperative necessity in the education of children; that he threatened his previous teachers whom, as pious Catholics, he claimed to reverence; that he threatened them with dire consequences if they refused to teach this political philosophy to young children.

"Assume at this time he was exceedingly restless in manner, couldn't sit still for a moment on a chair, and talked in a disconnected fashion. At this time he was very conceited and pompous and wrote incoherent letters. His manners and actions were such that he impressed the Christian Brothers by whom he had been educated, as a dangerous lunatic. Although professedly a pious Catholic he behaved during Mass and church services in such a peculiar manner as to impress a member of the choir that he was insane. During his visit to the Church of St. Columbkil he struck a peculiar attitude, persisting in enforcing himself in the choir reserved for the singers and organist; and during very solemn services he would enter the church with his hat on and assume different attitudes during solemn service which were inconsistent with his training, his birth, and education.

"Assume that in his discussions in the society connected with the church, he displayed such peculiar manners and action, that a member of the society who at first looked on him as a very

intelligent chap regarded him as a lunatic; that although a professed student and exponent of the doctrine of Henry George, he was unable to make other than illogical and disconnected speeches; that he resisted criticism by the members of the single tax club as an insult and complained of their treatment of him. That his action in the Single Tax Club was such as impressed several members of the club as those of a lunatic, despite the fact that he claimed to hold the same political philosophy they did.

"Assume that he labored under intense nervousness, stuttered, stammered, and would no sooner get started than he would talk of closing. He insisted on talking when not recoginzed by the president and denounced him as an atheist for bothering him. That he quoted Scripture in a discussion on municipal corruption which had no reference to the subject. That at this time he complained of persecution by his family because of his advocacy of the single tax idea; the persecution in reality being but a friendly remonstrance against a young man in poor circumstances trying to reform the world.

"Assume his manner and discussion at the club was different from most members. He desired to speak but never availed himself of the opportunity when it was in order. That on one occasion he entered the Secular Union, an organization of anti-church people, throwing his finger at the audience, after a discussion antagonistic to churches, he said, 'If you men persist in talking that way against the church we Christians will kill you.' His manner and actions were such as to impress a member of the union that he was a dangerous lunatic.

"Assume that although treated friendly by all the members, on a later occasion he resented any attempt at courtesy with a very savage look and action. That he was continually writing to prominent people, the world over, incoherent heterogeneous mixtures of religion, economy, and politics, generally without reference to anything. That although a pious Catholic, he wrote irreverent letters upon matters of church discipline to prelates of the church, so offensive in character as to arouse the indignation of his pious Catholic relatives.

"Assume that despite the fact that he was a man of very defective education and was regarded by Catholic clergymen as a lunatic and a man of deficient intellect, he insisted that he was so powerful in the church as to secure by a letter to the Pope the re-instatement of Dr. McGlynn.

"Assume that in November, 1891, he entered a debating club, of which he was a member, moved around the room in a manner to cause laughter by the members. The subject under discussion was the 'President of the United States.' The members began laughing. That, although not chairman, he rapped them to order, he then began to address the members on the subject of single tax, and then drifted to track elevation and city council, whom he denounced as robbers and thieves. And finally, although a pious Catholic, he referred to the intolerability of the Bishop and Pope.

"Assume that in the spring or summer of 1892, he visited a former instructor of the Catholic Academy, with whom he had a discussion on religion and single tax matter in such a disconnected way that the brother believed him to be insane.

"Assume also in the spring of 1893 he called on the same brother and seemed to be suffering very much from some mental trouble. He could not keep his position for a minute sitting on his chair, sometime he would allow himself to slide down till the back of his head rested on the chair. He would get up and pull his clothes down and talk in a very disconnected way, so that the brother regarded him as seriously demented, and called another brother of the same academy to the room. As the brother entered, the man under consideration stopped and looked at the new comer with a very wild stare, then stood up by his chair, walked around behind it. He had a very pompous air and talked in such a disconnected and irrelevant manner that the second brother regarded him as insane and dangerous.

"Assume that at this time he was just able to support himself in a very meagre fashion by carrying newspapers. He claims to have elected a Mayor of Chicago, whose popularity was notoriously great, and he further claims this Mayor, a man of university education, who was a shrewd politician, well

acquainted with every phase of Chicago politics, promised him a reward for his services, the position of Corporation Counsel, a position which could only be filled by a lawyer of admitted legal abilities.

"Assume further that the Mayor appointed to this position a member of the leading firm of Chicago lawyers, but despite this fact the man in question so persisted in his belief that he was to be the Corporation Counsel, that he called upon the appointee and introduced himself as his successor, and that thereupon the Corporation Counsel introduced himself to the other attachés of the office as his successor.

"Assume further that he was totally desitute of the needed legal knowledge, of lawyers' license, and very imperfectly educated.

"Assume furthermore that at this time he suddenly arose in the middle of the night from bed, wrapped the bed clothes around him, took a lamp in his hand and wandered around the kitchen table in the kitchen of the house in which he was boarding, in such a manner as to disturb the sleepers in the same room.

"Assume furthermore that he came back to his home at 3 o'clock in the morning during the latter part of July, ragged and shoeless, and did not know how he got in that condition, that he had been up in Wisconsin in a field praying for the general good of humanity; and that he was unable to tell how he got to Wisconsin; that for sometime thereafter he slept in the basement of a house in a very uncomfortable position on boards on top of a worn-out sofa; said basement was used as a storage place for coal and wood and infested with rats; that he slept there despite the remonstrance of his mother and brother.

"Assume that at this time he wrote a postal card to the Corporation Counsel; and that he could find and was to find means to elevate the railroad tracks better than the incumbent, and that the incumbent should resign and give him a chance; and that furthermore he was the only known man not a lawyer who applied for that position.

"Assume that on the twenty-seventh of August he was seen

by a friend dodging behind a number of trees in a public park until he finally ran into a tree in such a peculiar manner that he was regarded as insane.

"Assume that on the night of October 28th he called at the house of the Mayor, whom he claimed to have elected, and was informed that he was then at supper; that he refused to disturb him; that he returned a half hour later and was admitted to the Mayor's presence, at whom he fired four shots, which resulted in the Mayor's death.

"Assume that he then ran from the house through a quiet street, boarded a car and went to a police station where he gave himself up, stating "I have shot the Mayor, lock me up."

"Assume furthermore that he claims to be justified in the act on the ground that it was needed in order to secure track elevation and for the benefit of single tax; that the Mayor had betrayed his confidence, that he claims to have forced the railroad companies to sue for peace and ask for terms from the city authorities.

"Assume further that he repudiates any claim that he is insane. Assuming such state of things what would be your opinion of the mental condition of the person described in this hypothetical question at the time of the homicide?"

To combat the evidence of Prendergast's insanity embodied in the above, the prosecution called about thirty non-medical witnesses who testified they had seen nothing insane in him. Most of these were mere casual acquaintances, and none could claim any specially intimate acquaintance. As samples of the methods of the prosecution I may offer the facts that it subpœnæd the judge before whom the prisoner was first arraigned, who, of course, could see no insanity in the ten minutes official interview, and the fear and confusion he observed were utilized by the counsel as evidences of sanity. The Corporation Counsel also, who had testified for the defense that the prisoner had come to him demanding his position and that he had, in mockery, introduced him to his subordinates as his successor, was also called to give evidence as to his sanity, and these two, from their positions alone, were undoubtedly influential witnesses.

The following is the hypothetical question prepared by the prosecution and offered to its medical witnesses:

"Assume that a young man, 26 years of age, in good health, and who has always enjoyed good health, and who has never been seriously ill during the whole of his life; that he had the advantages of a common school education, and that he availed himself of the same; that he was a constant reader and a close reasoner; that much had been said in the newspapers about the elevation of tracks; and that much denunciation had been indulged in by the press on account of the non-elevation of railroad tracks and severe criticisms indulged in against grade crossings for railroads; that the person referred to had read of these denunciations and criticisms thus contained in the press; that he had entertained an idea that if he held the position of Corporation Counsel that he could do much towards the accomplishment of that result; that he in politics had espoused the cause of the Mayor of the city, with an expectation that he would meet with political reward therefor by being given the position of Corporation Counsel, or some other position whereby he would have to deal with the question of elevated tracks. That after the election of the Mayor referred to, the subject of this hypothetical question has applied to the Mayor referred to for a position or positions previously mentioned, and had met with a refusal; that this so angered him that thereafter he purchased a pistol, carefully loaded the same with the end, object and purpose in view of killing the Mayor who had refused him the position or positions referred to; and that on the twenty-eighth day of October, 1893, he went to the house of Mayor Harrison at a time when it was expected he is to be at home, at about half-past seven o'clock in the evening; that he called at the door and accosted the maid servant, who, in response to his request to see the Mayor, stated that he was at supper and requested him to call again in half an hour; that he remarked 'very well,' went away and remained precisely the time stated, and called again at the house, rang the bell which brought the maid aforesaid to the door, of whom he inquired for the Mayor, was admitted into the hall-way; that the maid stepped into the dining-room

where the Mayor was then seated at the table and announced to him that a man desired to see him in the hall, whereupon the Mayor arose from his seat and walked out to the hall-way, when he was confronted by the person aforesaid, who deliberately fired two well aimed and deliberate shots into his body; that while these two shots were being thus fired a third person appeared upon the scene through the door-way leading into the hall in which the shooting occurred, when the person shooting heard the noise of the opening door, and turned his pistol, which was aimed at the Mayor with the view and purpose of shooting the third time, towards the head or body of the new comer, whereupon said new comer hastily retreated, when the person doing the shooting turned his pistol at the Mayor, took deadly and deliberate aim at his body and fired the shot; that at the time the said shot was fired, the Mayor already fatally wounded and weakened thereby was fast sinking to the floor; that said shot entered above the left nipple and ranged downward through the body, and which shot, together with the two shots referred to, then and there killed the Mayor. Soon after the third shot was fired, the person who fired the same was possessed of fear, and believing himself to be in danger, contracted his body into as small a compass as possible, and in a bent and stooping manner retreated from the hall-way to the outer door of the house; that when he reached said door-way, seeing in front of him a person or persons who would be likely to obstruct his passage, fired another shot into the doorway with the view and object of frightening said person or persons so that they would not attack him or obstruct his escape. That he fled to the police station in order to obtain protection from physical injury which he might sustain at the hands of the people.

"Assume that at the time the accused first applied to the house to see the Mayor up to his final escape from the house his mind was capable of planning; that he was capable of taking deliberate aim; that the element of bodily fear and personal safety were present, and that he knew at the time that he fired the shots that he had unlawfully killed a fellow-citizen by firing three shots into his body.

"Assume that when he reached the police station and confronted the officer there, that he stated to the officer that he killed the Mayor because he had betrayed him; that he would talk no further about the circumstances of the killing until he had seen his attorney. Would you say, in considering all the facts and circumstances heretofore detailed, that the person referred to as having done the killing referred to was sane or insane?"

As the best statement of the facts indicating sanity and rebutting the evidence on which the hypothetical case of the defence was based, the above is certainly not a very strong showing, and this was admitted, as will be seen, by most of the medical witnesses for the State.

The first medical witness for the State was Dr. J. C. Spray, ex-Superintendent of the Cook County Asylum for the Insane, and the only one of the six experts first employed who was available to testify for the prosecution. The following is extracted from the record of his testimony:

"Q. Can you possibly remember the question that was put by the defense to the doctors upon the stand—the hypothetical question? A. Yes, I heard it read. Q. I want to ask you whether or not, taking that hypothetical case and associating with it you own knowledge of the man, what would your answer be? A. Well, taking that question into consideration, with my own knowledge and observation of the individual, I could not pronounce him insane. You can take some of the assumptions of that hypothetical question and you would be compelled to say that the party, if it had represented itself in any individual, he would be insane."

Considering the fact that all the assumptions of the said hypothetical question were merely statements of what was proven by undisputed evidence the above admission is important and the rather irregular combination of the answer to a hypothetical question with one's personal opinion from observation was required to satisfy the wishes of the counsel for the prosecution. Dr. Spray's personal judgment was at fault in this case, and it is to be hoped that he is not at the present time so ready to testify to the sanity of Prendergast.

There were some other points in Dr. Spray's testimony that might be noted, but as he was not the most decided medical witness for the State and space is limited, they may be passed. The second physician called was Dr. T. J. Bluthardt, an ex-county physician, who testified that he had seen Prendergast four or five times in the jail, and had talked with him on various subjects. He said: "I have given the man a very careful examination and made his case a very particular study, and have come to the conclusion that I have not found any trace of insanity in that person. He has got fixed ideas on certain points, he has got ideas that coincide with the views of everybody, but he has got logic and reason for everything he says, everything he disputes, and everything he discusses."

"Q. Was he not coherent in his talk to you? A. Very coherent in every respect. Q. Did you say anything to him about the killing itself? A. I did. Q. What did he say on that subject? A. The only thing that he said there that looks to me like a fixed idea—that there is no jury that can find him guilty of murder because he killed Carter Harrison, because he ought to have been killed. I asked him what defense are you going to make—if you are not going to be declared insane; what defense are you going to make if you are not defended on insanity, and he said 'on justification.' Q. Now then do you regard that as evidence of insanity? A. I do not. Q. Why? A. Because it is a fixed idea of a great many people that are politically involved in questions that they either do not understand or are fanatics in. Q. Do you regard him as a fanatic? A. I regard him as a fanatic in religion and also in politics. Q. Do you believe Doctor, from what you know of the accused, that he would have committed the crime if he believed that certain punishment would follow from its commission? A. I do not know how to answer that. He claims that he killed Mr. Harrison because he had to remove him for cause; Harrison was in the way of his public and political welfare. Q. I will ask you this: At the time he fired the shot that killed Mr. Harrison, do you believe that at that time he knew the difference between right and wrong and had the power of choosing between right and

wrong? A. Certainly he did, he knew exactly what he was doing."

Dr. Bluthardt in his direct examination also stated that paranoia was a term devised to cover a condition that had previously no English name, and was only known by its German designation of *allgemeine Verrueecktheit*, a statement that does not do much credit to his psychiatrical knowledge.

The next witness was Dr. H. M. Lyman, who it seems testified only as an expert. It will be seen from the following extracts that in this case involving life or death he seems to endorse the doctrine of the complete and absolute responsibility of some of the insane, an opinion, which, to do him justice, it must be said he has not always consistently held.

"Q. Now does the degree of responsibility in paranoia vary? A. Yes, I should think it would be very variable, as variable as the individual cases. Q. Does the word paranoia convey the idea of irresponsibility? A. Not necessarily. Q. What about fear of punishment in the paranoiac, what effect does that have on them? A. That would depend upon the intensity and extent of the disease. Some would be afraid of punishment; some would have no fear of it whatever, and would be utterly reckless. Q. In the first instance, wouldn't it be an evidence of a slight attack? A. Yes, it would show that there was a great deal of reasoning power still remaining. Q. In order to deprive a person of responsibility must he not be acting under an irresponsible impulse or delusion? A. Yes, sir. Mr. WADE: Isn't the question of responsibility one for the jury to answer? THE COURT: Perhaps we enlarge somewhat on the term responsibility. Mr. TODD: Substitute for responsibility, the power to discriminate between right and wrong, the power of choosing or not to do an act? A. It would be necessary to deprive him of responsibility, he must have a loss of power to distinguish between right and wrong. To choose between right and wrong actions. Q. Isn't paranoia a disease of the brain, manifesting itself by delusions and hallucinations? A. Yes, it is a disease or defect of the brain."

The hypothetical question of the State was then given to

Dr. Lyman, and in reply he said, "I should say he was sane."

Cross-examination by Mr. Wade brought out the admission that every act stated in the hypothetical case of the prosecution might have been performed by an insane man, and that a man under the influence of delusions might be insane and irresponsible and yet appear quite sane on many points.

Dr. Lyman was followed on the stand by Dr. John A. Benson, two years Superintendent of the Cook County Asylum. His testimony was very lengthy, and he was very decided in his opinions as to the insanity of the accused. Nothing in fact seemed capable of changing them, he maintained that an insane man could not "perform the actions as outlined to me in the hypothetical question and be, in my opinion, mentally irresponsible." In this he stood alone among the medical witnesses for the prosecution, all but two of whom were asked the question whether all the statements contained in the State's hypothetical case were not compatible with insanity. One, as will be seen, rather evaded the question, the others with the exception of Dr. Benson, unhesitatingly admitted that such was the fact. The two of whom the question was not asked, Drs. Spray and Bluthardt would undoubtedly have made the same reply.

To show still further the opinion of Dr. Benson, when the hypothetical case of the defense was given him, he answered that, assuming everything in it as true, he saw no reason to consider the individual anything but sane.

Dr. Andrew J. Baxter was the next witness, he considered that the hypothetical case of the State indicated sanity, but in the cross-examination admitted that the acts narrated might have been done by an insane individual. He also admitted a limited experience with insanity. The following is extracted from the record of his cross-examination:

"Q. Now I understand you to say in answer to Mr. Trude that you thought the man was partially insane? A. Well now that requires a little explanation if you will permit me. I have got some views in regard to this man myself. My belief in regard to this man Prendergast is this: That he is weak-minded; that he is eccentric; that he is vain and pomp-

ous and has a great conceit of his own importance and so on, but while he is eccentric in his manner, morose in his disposition, cross in his temper, morose and cross and so on, at the same time the man is perfectly capable of telling what he is doing and knowing between right and wrong. That is my position in regard to Prendergast. . . . Q. Well, do you think that this man's brain is, to a certain extent, diseased? A. O, you can have that structural change. Q. What do you mean by structural change? A. Anything that is brought around by the development of inflammation, a disease. Q. Well, don't you think that this boy's mind is diseased to a certain extent? A. No, sir; I do not. Q. Don't you think it is abnormal? A. I told you he is a crank. Q. He is what you term a crank, Doctor? A. Yes, sir."

Dr. J. K. Egbert, ex-Assistant County Physician, was the next witness. He testified that, in his judgment, the prisoner was sane. On cross-examination he admitted that all he knew about the prisoner was learned in the court room, that the actions narrated in the hypothetical case of the State might be all performed by an insane man, and that there was a certain incongruity in an illiterate newsboy demanding the position of Corporation Counsel.

Dr. N. S. Davis was the next witness called for the State. He had interviewed Prendergast in the jail and considered him sane. The hypothetical case of the State indicated sanity in his opinion. When asked in the cross-examination whether the acts there narrated could not have been performed by an insane man, he replied, "Well, to say what is possible is to assume more than human beings can do. They do not know what is possible. It is not at all reasonable to suppose they were insane."

In view of the fact that the hypothetical question of the defense was not asked Dr. Davis, one statement of his is noteworthy. He said it was a poor time to go and question the accused after the crime was committed; the mental condition must be determined mainly, if not entirely, from his condition and conduct prior to the act. There is no reason to suppose Dr. Davis had any knowledge whatever of the prisoner, except

what he learned during the trial, in fact it was not claimed that he had, and yet he seemed to have made up his mind very positively notwithstanding the undisputed record of the insane acts of the prisoner.

Dr. Leonard St. John, a surgeon, was next called. The following is taken from his testimony:

"Q. Will you please give your views on paranoia? A. Paranoia is quite a new term. It has been brought forward by some authorities to define a species of mental disease. Authorities differ as regards the essentials necessary for a paranoiac, so much so that I find it covers every degree of mental condition from a simple case of hysteria to a case of acute mania. They are all covered by the generic term paranoia. The authority who has quoted paranoia most extensively is one I have heard mentioned here to-day; that is Spitzka, whose definition is probably more clear. Do you wish me to give it? Q. Yes, sir. A. It is more clear than any of the other authorities. He defines it as a crank, a cranky state of insanity. Q. You heard defined here by somebody a quotation by Spitzka. You said something about the next page. A. That was in reference to the configuration of the skull and face if I remember right. Q. Can you quote from the book from memory? A. It was quoted from the book that such an individual would have a deformed brain; that he would be sexually perverted, and numerous other traits, and I think the witness was asked whether that would indicate insanity, such a condition of head. Such a head indicates an idiot, an idiot only, and you will find in Spitzka, page 88 or 86, where Spitzka qualifies it and says that they are idiots only and that those who are insane and not idiots, there is nothing in the configuration of the skull which would indicate anything at all according to Spitzka. . . . Q. What do you say with reference to that idea of his of being Corporation Counsel, under the circumstances? A. Simply that he had a good opinion of himself and his abilities, and wished to be Corporation Counsel. Q. Is there any evidence of delusion in that? A. No delusion; desire doesn't make a delusion." . . .

Mr. Trudes' hypothetical question for the State was pro-

pounded to the witness, who answered "I would consider him sane.

In the cross-examination by Mr. Wade, the witness said that the fear shown by the accused when in the jail at the time of the Mayor's funeral, was an indication of a sane mind. When pressed as to whether insane persons might not feel fear, he said yes, but that it was a "sane element of insanity." This he explained as the retention of a natural instinct in the insane mind. He admitted also that all the acts stated in the State's hypothetical case might be done by an insane person.

Dr. St. John is not an alienist, but this cannot account for all the errors in his testimony. Paranoia, as understood by specialists in insanity is not quite the indefinite thing he makes it, and if his reading had been to any extent accurate, he could not have believed his own statement. Spitzka does not say that only idiots have cranial deformities, in fact he is badly misrepresented in this testimony. Fear, as a "sane element of insanity," is a novel idea; as a purely animal emotion, its manifestation is one of the most frequent phenomena of mental alienation, in which the higher inhibitions that restrain it are suppressed or weakened. The senior counsel for the prosecution, nevertheless, made the exhibition of fear on the part of the accused one of the strongest of his points to prove his sanity and apparently carried the jury with him, thus making an evidence of sanity out of one of the most characteristic symptoms of a deranged mind. That he could have gotten a physician who claimed to know anything about insanity to support him in this, shows how fictitious such claim must be, and is remarkable to say the least.

The last two medical witnesses for the State need not take much of our space. One was a homeopathic practitioner, who had made up his opinion from a ten or fifteen minutes interview with the prisoner in the jail and observation of him in the court room. The other was a general practitioner whose experience with insanity was not extensive, and who admitted that certain things in the accused seemed peculiar and showed indications of an unbalanced mind. Both admitted the compatibility of the actions in the State's hypothetical case

with insanity, and neither could be called very strong witnesses for the prosecution.

I have not reviewed the medical testimony for the defense, as it did not present the peculiarities of that for the prosecution. On the one hand we have the facts that out of six alienists, selected by the counsel for the State, on account of their qualifications as insanity experts, and who repeatedly examined the accused some days or weeks prior to the trial, only one could be utilized against him, and this one, not by any means superior to his confreres, while testifying for the prosecution, admitted the defective organization of the prisoner, and that certain facts of the testimony embodied in the hypothetical case of the defense, must necessarily indicate insanity Three of these experts, Drs. Brown, Church and Dewey, were subpœnæd by and testified for the defense. Besides these several other medical men of more or less experience in the case of the insane, including in their number Dr. J. G. Kiernan, a well-known authority on insanity, and Dr. Wahl, the jail physician, gave unequivocal testimony on the same side.

On the other hand we have the fact that apparently only two of the medical witnesses for the State had examined the prisoner before the trial, one of them, Dr. Spray, their most competent witness as regards experience with insane cases, made, as has been seen, admissions that ought to have materially affected the value of his testimony for the prosecution. The other one, Dr. Baxter, also made admissions, not only that the prisoner was a crank, an abnormal individual, but also that he personally did not know very much about insanity. The other medical witnesses were apparently picked up at random, their essential qualification being their opinion that the accused was sane. Only two, or at most three, of the State's medical witnesses could claim much experience with insanity; one of these, Dr. Spray, has been already mentioned, the others were Dr. Benson, two years Superintendent of the Cook County Asylum, a fact which, by itself, does not prove competency as an expert, and Dr. Bluthardt, who, as a former County Physician, had had experience with insane cases in the jail and in their trials before the county court.

It would seem much like threshing over old straw to dwell here on the evils of partisan expert testimony; it is the opprobrium of English and American medical jurisprudence and has formed the text for articles almost without number, for the last forty or fifty years. The evils exist, however, and we have here examples of them. They will continue to exist as long as courts have no standard of qualifications for an expert; as long as anyone with a medical handle to his name can be put forward and be equally acceptable to the court and influential with the jury, whether he knows the rudiments of the subject on which he poses as an expert or not.

This case, however, illustrates a more hopeful phase of the subject; it shows that true experts can be depended upon to give an honest opinion. Out of six selected by the State for their well-known reputation and standing in the profession, who made thorough examinations of the prisoner, it dared only put one on the stand, and his testimony contained admissions that ought to have made it quite as valuable for the defense as for the prosecution. It also illustrates the need of real expert testimony in cases like this where popular prejudice runs high, when an especially prominent and popular individual has been the victim of a homicide. In such a case especially is the truth of Dr. Beard's statement that the only really valuable testimony is expert testimony, made evident. When the whole case revolves upon the question of the sanity or insanity of the accused, a calm scientific opinion is especially needed, and the worth of a witness depends upon his special knowledge of the subject in hand. And as Dr. Beard says insanity is a subject in which the emotions are especially called upon and real experts are very rare.

Another question that is suggested by this trial is that of the right of the prosecution to suppress testimony that may be favorable for the defense. When the counsel for the defense suspected that some of the experts' opinions might not be favorable to the other side, they subpœnæd four of the experts who had been engaged to examine the prisoner before the trial. These gentlemen had received no retainers from the prosecution; one of them was excused, and three appeared

on the witness stand in obedience to the subpœna. The fact that they had been first called by the prosecution to examine the prisoner, was sought to be presented to the jury, but this was successfully resisted. Of the two of the six experts not subpœnæd by the defense, one, Dr. Spray, appeared for the prosecution; the other, Dr. Clevenger, did not appear on the witness stand at all, his testimony being thus practically suppressed.

Theoretically, in capital cases, the accused is presumed to have all reasonable chances for his life, it is not according to the spirit of the law to deprive him of the benefit of any facts that may indicate or tend to indicate his innocence or his irresponsibility. The duty of the prosecution is supposed to be the simple furtherance of justice for the protection of society, and conviction and subsequent execution in a capital case, secured by the suppression of evidence, either directly or by legal technicalities, can only be properly characterized as a judicial murder.

Fortunately, matters have not gone so far in the case of Prendergast. Though convicted on the testimony of which I have given samples, sentenced to death, his sentence affirmed by the higher court and executive clemency denied, he still lives and is awaiting his trial for insanity.

Since the above was written, the trial for insanity has occurred, and the jury found him sane. The following from the judge's instructions will explain, to a large extent, the result.

After ruling in the trial that the former trial had settled the question of the prisoner's sanity at the time of the killing, and that only facts evidencing the occurrence of insanity since his sentence were admissible, the judge instructed the jury as follows:

"In this proceeding the question simply is, does he understand and appreciate the fact that he has been tried and found guilty of murder? Does he understand the nature of this proceeding?

"Is he so far sane as to be capable of making preparation for death? Or, in a word, is he so far sane that it would not be contrary to humanity to execute him. This is the test and whether he be sane or insane in any other sense it does not concern us to inquire.

"If you believe from the evidence that the prisoner has insane delusions in respect to some subjects, yet if you are further satisfied from the evidence that none of these delusions render him unconscious of his present condition or unfit him for making preparation for death, then you are instructed that such delusions do not constitute such insanity or lunacy as to afford a reason for staying the execution of the sentence of the court."

In other words, if a lunatic has sense enough to know he is ordered to be hanged, he must be hanged. This would leave only absolute dements and idiots to get the benefit of the plea of insanity. The special humanity, too, of making lunatics suffer punishment in proportion as they are capable of being distressed by it is peculiar to say the least.

If these instructions including that, the former verdict made the prisoner sane, are good law, they are certainly indefensible in any moral or medical point of view.